

SENATE BILL No. 455

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-2-4-1; IC 23-2-4-13.

Synopsis: Continuing care agreements. Revises the definition of "continuing care agreement" to mean agreements requiring the payment of an entrance fee of at least \$25,000. Adds a definition of "continuing care retirement community". Revises the definition of "provider" in the continuing care law to mean a person that agrees to provide continuing care under a continuing care agreement to at least 25% of the individuals living in a facility owned or operated by the provider. Eliminates payments to the Indiana retirement home guaranty fund after June 30, 2009.

Effective: January 1, 2009 (retroactive); July 1, 2009.

Miller

January 14, 2009, read first time and referred to Committee on Health and Provider Services.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 455

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-2-4-1, AS AMENDED BY P.L.27-2007,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2009 (RETROACTIVE)]: Sec. 1. As used in this
4 chapter, the term:

5 "Application fee" means the fee charged an individual, in addition
6 to the entrance fee or any other fee, to cover the provider's reasonable
7 costs in processing the individual's application to become a resident.

8 "Commissioner" means the securities commissioner as provided in
9 IC 23-19-6-1(a).

10 "Continuing care agreement" means an agreement by a provider to
11 furnish to ~~at least one (1) an~~ individual, for the payment of an entrance
12 fee **of at least twenty-five thousand dollars (\$25,000)** and periodic
13 charges:

14 (1) accommodations in a ~~living unit of a home and~~ **continuing**
15 **care retirement community;**

16 ~~(†) (2)~~ **(2)** meals and related services;

17 ~~(‡) (3)~~ **(3)** nursing care services;



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- (3) (4) medical services;
 (4) (5) other health related services; or
 (5) (6) any combination of these services;

for the life of the individual, ~~or for more than one (1) month~~. **unless the agreement is terminated as specified under this chapter.**

"Continuing care retirement community" includes the following:

(1) An independent living facility.

(2) A health facility licensed under IC 16-28.

"Contracting party" means a person or persons who enter into a continuing care agreement with a provider.

"Entrance fee" means the sum of money or other property paid or transferred, or promised to be paid or transferred, to a provider in consideration for one (1) or more individuals becoming a resident of a home under a continuing care agreement.

"Home" means a facility where the provider undertakes, pursuant to a continuing care agreement, to provide continuing care to five (5) or more residents.

"Living unit" means a room, apartment, cottage, or other area within a home set aside for the use of one (1) or more identified residents.

"Long term financing" means financing for a period in excess of one (1) year.

"Omission of a material fact" means the failure to state a material fact required to be stated in any disclosure statement or registration in order to make the disclosure statement or registration, in light of the circumstances under which they were made, not misleading.

"Person" means an individual, a corporation, a partnership, an association, a limited liability company, or other legal entity.

"Provider" means a person that agrees to provide continuing care to ~~an individual~~ under a continuing care agreement **to at least twenty-five percent (25%) of the individuals living in a facility owned or operated by the provider.**

"Refurbishment fee" means the fee charged an individual, in addition to the entrance fee or any other fee, to cover the provider's reasonable costs in refurbishing a previously occupied living unit specifically designated for occupancy by that individual.

"Resident" means an individual who is entitled to receive benefits under a continuing care agreement.

"Solicit" means any action of a provider in seeking to have an individual residing in Indiana pay an application fee and enter into a continuing care agreement, including:

- (1) personal, telephone, or mail communication or any other

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1 communication directed to and received by any individual in
2 Indiana; and

3 (2) advertising in any media distributed or communicated by any
4 means to individuals residing in Indiana.

5 **"Termination" refers to the cancellation of a continuing care**
6 **agreement under this chapter.**

7 SECTION 2. IC 23-2-4-7.5 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
9 JANUARY 1, 2009 (RETROACTIVE)]: **Sec. 7.5. A continuing care**
10 **agreement may be terminated for any of the following reasons:**

11 (1) The provider has determined that the resident is
12 inappropriate for living in the care setting.

13 (2) The resident is unable to fully pay the periodic charges
14 because the resident inappropriately divested the assets and
15 income the resident identified at the time of admission to meet
16 the ordinary and customary living expenses for the resident.

17 (3) Providing assistance to the resident would jeopardize the
18 financial solvency of the provider and the other residents
19 being served by the provider.

20 (4) The resident has requested a termination of the agreement
21 as allowed under the agreement.

22 SECTION 3. IC 23-2-4-13, AS AMENDED BY P.L.2-2006,
23 SECTION 180, IS AMENDED TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) There is established the
25 Indiana retirement home guaranty fund. The purpose of the fund is to
26 provide a mechanism for protecting the financial interests of residents
27 and contracting parties in the event of the bankruptcy of the provider.

28 (b) To create the fund, a guaranty association fund fee of one
29 hundred dollars (\$100) shall be levied on each contracting party who
30 enters into a continuing care agreement after August 31, 1982, **and**
31 **before July 1, 2009.** The fee shall be collected by the provider and
32 forwarded to the commissioner within thirty (30) days after occupancy
33 by the resident. Failure of the provider to collect and forward such fee
34 to the commissioner within that thirty (30) day period shall result in the
35 imposition by the commissioner of a twenty-five dollar (\$25) penalty
36 against the provider. In addition, interest payable by the provider shall
37 accrue on the unpaid fee at the rate of two percent (2%) a month.

38 (c) Any money received by the commissioner under subsection (b)
39 shall be forwarded to the treasurer of state. The fund, and any income
40 from it, shall be held in trust, deposited in a segregated account,
41 invested and reinvested by the treasurer of state in the same manner as
42 provided in IC 20-49-3-10 for investment of the common school fund.

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1 (d) All reasonable expenses of collecting and administering the fund
2 shall be paid from the fund.

3 (e) Money in the fund at the end of the state's fiscal year shall
4 remain in the fund and shall not revert to the general fund.

5 SECTION 4. **An emergency is declared for this act.**

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